

# Court of Appeals, State of Michigan

## ORDER

John D Maikisch v State Farm Mutual Automobile Insurance Co

Docket No. 261239

LC No. 04-405953-NI

Michael J. Talbot  
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood  
Judges

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The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's February 15, 2005 order is REVERSED to the extent the trial court found that plaintiff suffered a serious impairment of body function pursuant to MCL 500.3135. There is no dispute regarding the nature and extent of plaintiff's injuries. Therefore, the question of whether plaintiff suffered a serious impairment of body function is a question of law. MCL 500.3135(2). In this case, under the totality of the circumstances, while plaintiff's back condition may have resulted in minor changes in how he performs certain activities, and self-imposed restrictions, plaintiff is generally able to conduct his normal life. See *Kreiner v Fischer*, 471 Mich 109, 133-134; 683 NW2d 611 (2004). The injury has had only a de minimus effect on, and has not altered the course or trajectory of, plaintiff's normal life. *Id.* at 131, 133. Therefore, plaintiff has failed, as a matter of law, to establish that he has suffered a serious impairment of body function.

This matter is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 13 2005

Date

*Sandra Schultz Mengel*  
Chief Clerk